

103D CONGRESS
1ST SESSION

H. R. 1044

To amend title XVIII of the Social Security Act to provide for the enforcement of standards relating to the rights of patients in certain medical facilities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mrs. BYRNE introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

A BILL

To amend title XVIII of the Social Security Act to provide for the enforcement of standards relating to the rights of patients in certain medical facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a)(1) sections 1861(e)(9) and 1861(j)(15) of the
4 Social Security Act (relating to qualifications of hospitals
5 and skilled nursing facilities) are each amended by strik-
6 ing out “health and safety” and inserting in lieu thereof
7 “health, safety, and rights”.

6 “RIGHTS OF PATIENTS OF CERTAIN LONG-TERM CARE
7 FACILITIES

“(1) require the governing board of the facility to establish written policies, consistent with the rights set forth in subsection (b), regarding the rights and responsibilities of patients and, through the administrator of the facility, to develop and adhere to procedures for implementing such policies;

HR 1044 IH

1 payee of a patient pursuant to section 205(j) of this
2 Act; and

3 “(3) require the staff of the facility to be
4 trained and involved in the implementation of these
5 policies and procedures.

6 “(b) A facility’s policies and procedures regarding
7 rights of patients of the facility must at least ensure that
8 the following patients’ rights are provided:

9 “(1) INFORMATION ON PATIENT RIGHTS.—A
10 patient’s right to be fully informed, as evidenced by
11 the patient’s written acknowledgment, before or at
12 the time of admission and during stay of these
13 rights and of all rules and regulations governing pa-
14 tient conduct and responsibility.

15 “(2) INFORMATION ON SERVICES AND
16 CHARGES.—A patient’s right (A) to be fully in-
17 formed, and given a written statement before or at
18 the time of admission and during stay, of services
19 available in the facility and of related charges for
20 such services, including any charges for services not
21 covered under this title or title XIX or not covered
22 by the facility’s basic per diem rate, and (B) to be
23 informed in writing at least 30 days in advance of
24 any changes in the availability of services or in the
25 charges for these services.

1 “(3) INFORMATION ON AND PARTICIPATION IN
2 MEDICAL TREATMENT.—A patient’s right (A) to be
3 fully informed by a physician of the patient’s medi-
4 cal condition, unless medically contraindicated for a
5 specified and limited period of time (as documented,
6 by a physician, in the patient’s medical record), (B)
7 to be afforded the opportunity to participate in the
8 planning of his medical treatment, and (C) to refuse
9 to participate in experimental research.

10 “(4) CONDITIONS OF TRANSFER OR DIS-
11 CHARGE.—A patient’s right (A) to be transferred
12 within the facility or discharged from the facility
13 only for medical reasons, for his welfare or that of
14 other patients, or for nonpayment of his stay (except
15 as prohibited by this title or title XIX), (B) to be
16 informed before admission of the causes for such a
17 transfer or discharge, (C) to be given 30 days’ ad-
18 vance notice of such a transfer or discharge (except
19 for emergencies threatening the health or safety of
20 the patient), and (D) to be given sufficient prepara-
21 tion and orientation to ensure safe and orderly
22 transfer or discharge and adjustment and to have
23 this preparation and orientation documented in his
24 medical record.

1 “(5) GRIEVANCES.—A patient’s right to be as-
2 sisted, throughout his period of stay, in his exercise
3 of his rights as a patient and as a citizen, and to
4 this end the patient’s right to file complaints under
5 section 1883, voice grievances, and recommend
6 changes in policies and service to the staff of the fa-
7 cility and to outside representatives of his choice (in-
8 cluding representatives of governmental agencies ad-
9 ministering the programs under this title and title
10 XIX) free from restraint, interference, coercion, dis-
11 crimination, or reprisal.

12 “(6) MANAGEMENT OF PERSONAL FINANCIAL
13 AFFAIRS.—A patient’s right to manage his personal
14 financial affairs or be given, at least quarterly, an
15 itemized accounting of financial transactions made
16 on his behalf whenever the facility accepts his writ-
17 ten delegation of this responsibility for any period of
18 time in conformance with State law.

19 “(7) FREEDOM FROM ABUSE AND RE-
20 STRAINTS.—A patient’s right—

21 “(A) to be free from mental and physical
22 abuse, and

23 “(B) to be free from chemical and physical
24 restraints, except (i) as authorized in writing by
25 a physician for a specified and limited period of

1 time, or (ii) in emergencies when necessary to
2 protect the patient from injury to himself or to
3 others (in which case notice of the use of such
4 restraints, and an explanation of the cir-
5 cumstances thereof, shall be promptly provided
6 to the attending physician and noted in the pa-
7 tient's medical record).

8 “(8) CONFIDENTIALITY OF TREATMENT AND
9 MEDICAL RECORDS.—A patient's right—

10 “(A) to be assured confidential treatment
11 of his personal and medical records, and

12 “(B) to approve or refuse the release of
13 such records to any individual outside the facil-
14 ity, except in the case of a transfer to another
15 health care institution or as required by law or
16 third-party payment contract.

17 “(9) DIGNITY AND PRIVACY.—A patient's right
18 to be treated with consideration, respect, and full
19 recognition of his dignity and individuality, including
20 privacy in treatment and in care for his personal
21 needs.

22 “(10) WORK REQUIREMENTS.—A patient's
23 right not to be required to perform services for the
24 facility.

1 “(11) FREEDOM OF ASSOCIATION.—A patient’s
2 right to associate and communicate privately (in
3 writing or otherwise) with persons of his choice.

4 “(12) PARTICIPATION IN ACTIVITIES OF
5 CHOICE.—A patient’s right to meet with, and par-
6 ticipate in activities of, social, religious, and commu-
7 nity groups at his discretion.

8 “(13) USE OF PERSONAL POSSESSIONS.—A pa-
9 tient’s right to retain and use his personal clothing
10 and possessions as space permits, unless to do so
11 would infringe upon rights of other patients, and to
12 be provided security in storing possessions.

13 “(14) PRIVACY FOR MARRIED PATIENTS.—A
14 married patient’s right to be assured privacy in vis-
15 its by the patient’s spouse and, if spouses are both
16 patients in the facility, the right of the patients to
17 share the same room if they so desire.

18 “(c) The patient’s rights and responsibilities specified
19 in paragraphs (1) through (4) of subsection (b), as they
20 pertain to a patient adjudicated incompetent in accordance
21 with State law, devolve to the patient’s guardian, next of
22 kin, sponsoring agency (or agencies), or relative or other
23 person serving as representative payee under section
24 205(j) of this Act (except when the facility itself is rep-
25 resentative payee).

1 “ENFORCEMENT OF PATIENT’S RIGHTS

2 “SEC. 1883. (a) The Secretary shall establish, by reg-
3 ulation, a schedule of the maximum amount of civil pen-
4 alties which may be imposed under this section for the
5 violation of each of the patient’s rights set forth in section
6 1882(b). No such penalty shall exceed \$500 for a single
7 violation, except that the civil penalty for a violation of
8 a patient’s right, under paragraph (5) of such section, to
9 file a complaint under this section free from restraint, in-
10 terference, coercion, discrimination, or reprisal shall not
11 exceed \$1,000. The Secretary shall define in those regula-
12 tions what constitutes a separate violation for purposes
13 of this section.

14 “(b)(1) Any patient, or any person on behalf of such
15 a patient, who claims to have had a right under section
16 1882(b) violated by the facility may submit a complaint,
17 written or oral, with the appropriate enforcing agency (as
18 defined in subsection (f)). No such complaint with respect
19 to a violation shall be considered by an enforcing agency
20 under this section unless it is filed with the agency within
21 180 days after the date the alleged violation occurred.

22 “(2) Upon receiving a complaint concerning a facility
23 under paragraph (1), an enforcing agency shall promptly
24 notify the facility of the complaint (including the date,
25 place, and circumstances of the alleged violation), shall in-

1 vestigate the complaint (keeping confidential insofar as
2 possible the identity of the complainant and the name of
3 the patient or patients involved if the complainant is not
4 such a patient), and shall provide the complainant with
5 a written report thereon within 30 days of the date the
6 complaint was filed. A copy of the report of the agency,
7 including the complaint (with identities of the complainant
8 and any patients deleted), shall be made part of the
9 permanent files of the agency and made available to the
10 public.

11 “(c)(1)(A) If, as a result of an investigation con-
12 ducted under subsection (b)(2), the enforcing agency de-
13 termines that a facility has not violated any patients’
14 rights under section 1882(b), the enforcing agency shall
15 notify the facility and the complainant of such determina-
16 tion.

17 “(B) If, as a result of such an investigation, the en-
18 forcing agency determines that a facility has violated one
19 or more patients’ rights under section 1882(b), the enforc-
20 ing agency shall endeavor to provide appropriate adjust-
21 ment with respect to any such alleged violation (and to
22 prevent future similar violations) by informal methods of
23 conference, conciliation, and persuasion. Nothing said or
24 done during and as part of such informal endeavors may
25 be made public by the enforcing agency or used as evi-

1 dence in a subsequent proceeding without the written con-
2 sent of the persons concerned. If after such endeavors (but
3 in a period no longer than 30 days), the enforcing agency
4 is not able to secure from the facility a conciliation agree-
5 ment or other understanding acceptable to the agency and
6 the complainant, the agency shall assess against the facil-
7 ity a civil penalty (determined in accordance with the
8 schedule developed under subsection (a)) by an order
9 made—

10 “(i) after written notice (including notice of the
11 enforcing agency’s proposed order and the facility’s
12 opportunity to request, within 15 days after the date
13 the notice is received, a hearing on the proposed
14 order), and

15 “(ii) after opportunity for a hearing in accord-
16 ance with procedures to be specified by the Sec-
17 retary in regulations.

18 “(2) Such an order shall provide that the penalty
19 shall be paid (in accordance with subsection (d)(2)) to the
20 enforcing agency and the agency shall promptly make pay-
21 ment to patients (or heirs of patients, in the case of de-
22 ceased patients) in accordance with the penalties assessed
23 for violation of their rights. Notwithstanding any other
24 provision of law, civil penalties paid to any individual in
25 accordance with this paragraph shall not constitute in-

1 come or resources or otherwise be taken into account (A)
2 for purposes of determining the eligibility of the individ-
3 ual, or the family or household of the individual, for assist-
4 ance under a State plan approved under title XIX, or for
5 aid, assistance, or benefits in any form under any Federal
6 program, or any State or local program financed in whole
7 or in part with Federal funds, which conditions such eligi-
8 bility to any extent upon the income or resources of the
9 individual, family, or household, or (B) for purposes of de-
10 termining the amount or extent of such aid, assistance,
11 or benefits.

12 “(3) An enforcing agency may suspend imposition of
13 an order of assessment against a facility if the facility can
14 provide assurances, satisfactory to the agency, that the fa-
15 cility has taken such actions as will prevent the reoccur-
16 rence of the violation (and similar violations) from which
17 the order results. To the extent that the enforcing agency
18 determines, based on a later complaint or investigation,
19 that such actions have not been taken in accordance with
20 such assurances, the agency shall reimpose such an order.

21 “(d)(1)(A) Not later than 60 days after the final ac-
22 tion of an enforcing agency with respect to a complaint
23 or suspension of an order of assessment under this section,
24 any person adversely affected or aggrieved by the action
25 is entitled to judicial review thereof in the appropriate

1 United States district court or State court of competent
2 jurisdiction. The provisions of sections 701(b)(2), and 702
3 through 706 of title 5, United States Code, shall apply
4 to such reviews.

5 “(B) Where a patient or facility brings an action for
6 review of a determination by an enforcing agency which
7 is not in the patient’s or facility’s favor, respectively, and
8 the action is determined to constitute harassment of the
9 facility or patient, respectively, the patient or facility shall
10 be liable to the enforcing agency for all the agency’s legal
11 fees and costs (including reasonable attorney’s fees) in
12 connection with the action.

13 “(2)(A) If an enforcing agency has issued a final
14 order of an assessment of a penalty against a facility
15 and—

16 “(i) the order has not been suspended under
17 subsection (c)(3), the facility shall pay the amount
18 of the penalty to the enforcing agency within 60
19 days after the date the order becomes final, or

20 “(ii) the order has been suspended but has been
21 reimposed, the facility shall pay the amount of the
22 penalty to the enforcing agency within 60 days after
23 the date the order was reimposed.

24 “(B)(i) The agency will hold any such amounts paid
25 to it in escrow and, except as provided in clause (ii), shall

1 make payment of it, in accordance with subsection (b)(2),
2 at the end of the applicable 60-day period described in
3 subparagraph (A).

4 “(ii) If judicial review of such an order of an enforc-
5 ing agency has been sought, the agency shall make pay-
6 ment of any penalty collected at the conclusion of the re-
7 view and in accordance with the order of the court.

8 “(3) If a facility fails to make timely payment of a
9 civil penalty according to paragraph (2), the enforcing
10 agency shall recover the amount assessed (plus interest
11 at currently prevailing rates from the last date of such
12 60-day period) in an action brought in any appropriate
13 district court of the United States or State court of com-
14 petent jurisdiction and shall hold or transfer it in the man-
15 ner provided in that paragraph.

16 “(e) The imposition of a civil penalty under this sec-
17 tion shall not preclude, and shall be in addition to, any
18 other monetary damages recoverable by, or other relief
19 available to, patients or enforcing agencies as a result of
20 violation of patients’ rights.

21 “(f) For purposes of this section, the term ‘enforcing
22 agency’ means, with respect to an alleged violation occur-
23 ring in a State in which the Secretary—

1 “(1) has entered into an agreement under sec-
2 tion 1864(d)(1), the appropriate State or local agen-
3 cy or agencies specified in that agreement, or

4 “(2) has not entered into such an agreement,
5 such office within the Department of Health, Edu-
6 cation, and Welfare as the Secretary shall designate
7 by regulation.”.

8 (c) Section 1864 of such Act is amended by adding
9 at the end the following new subsection:

10 “(d)(1) The Secretary shall make an agreement with
11 any State which is able and willing to do so and has an
12 agreement under subsection (a) under which the agency
13 (or agencies) under subsection (a) will serve as an appro-
14 priate agency for the purpose of enforcing patients’ rights
15 under section 1883. The Secretary shall pay for the serv-
16 ices of such an agency in the manner prescribed in sub-
17 section (b).

18 “(2) Any agreement under this section with a State
19 with regard to determining whether a facility meets the
20 standards relating to patients’ rights and described in sec-
21 tion 1882 shall include a provision that each routine cer-
22 tification survey of such a facility shall include a private
23 meeting between patients and survey personnel to discuss
24 patients’ experiences within the facility as regards such
25 rights and compliance with such standards generally.”.

1 (d) Section 1865(a) of such Act is amended by insert-
2 ing after the second sentence the following new sentence:
3 “No institution shall be so deemed to meet standards re-
4 lating to patients’ rights and described in section 1882
5 unless the accreditation survey of the institution includes
6 a private meeting between patients and survey personnel
7 to discuss patients’ experiences within the institution as
8 regards such rights and compliance with such standards
9 generally.”.

10 SEC. 2. The Secretary of Health, Education, and
11 Welfare shall first publish proposed regulations for carry-
12 ing out the amendments made by this Act not later than
13 six months after the date of the enactment of this Act
14 and such regulations shall first become final and fully ef-
15 fective on the first day of the ninth month which begins
16 after the date of the enactment of this Act.

○